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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,563	04/24/2002	Christian Baccelli	SPINE-400	6793
7590 05/27/2005 Lerner David Littenberg Krumholz & Mentlik 600 South Avenue West Westfield, NJ 07090			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3732	PAPER NUMBER

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/031,563

Applicant(s)

BACCELLI ET AL

Examiner

Pedro Philogene

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Errico et al. (5,575,792) in view of Le Couedic et al. (6,368,320).

With respect to claims 1, 12, 25, 35, Errico et al disclose a multiaxial connection osteosynthesis system for the spine including a bone anchor member (300) having a head (304) a connecting member (250), a connector (400) having a first inwardly deformable housing (402) adapted to receive the head and with a second portion (422) the second portion having a U-shaped opening having an open end remote from the first inwardly deformable portion and a seat (421) the open end adapted to receive the connecting member (250) along an axis, the first and second portions extending along the axis for clamping the connecting member in the second portion, the system including clamping means (235,330) for clamping the connecting member in the second housing.

Although Errico et al teach of clamping, it is noted that Errico et al did not teach of a clamping means wherein the connector is arranged so that, when the clamping means loads the connecting member in the second housing in the direction of the axis, the connecting member loads the seat to inwardly deform the first portion and immobilize the head therein; as claimed by applicant. However, in a similar art, Le

Couedic et al., evidence the use of such a connector and clamping means, which presses down on the connecting member inwardly deform the first portion and locks the head of the bone anchor therein.

Therefore, given the teaching of Le Couedic et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the connector and clamping means, as taught by Le Couedic et al., in the device of Errico et al to press down on the connecting member and locks the head of the bone anchor.

With respect to claims 2-11, 13-24, 26-34, the above combination of references teaches all the limitations as set forth.

#### ***Response to Amendment***

Applicant's arguments filed 3/22/05 have been fully considered but they are not persuasive. Applicant stated that the references did not teach a housing having a U-shape to enable the connecting member to be top-loaded. Applicant's attention is directed, in particular, to the embodiments designed for fitting the connecting member from above, such as those of FIGS.10, 11. Furthermore, applicant stated that le Couedic is not combinable with Errico, because if one substituted the clamping element of le Couedic with the clamping of Errico, the Errico reference would not work for its intended purpose, the examiner begs to differ. The device according to claims 1, 12, 25, 35 differs from the device of Errico in that the connector is adapted so that when the clamping means load the connecting member in the second housing, the connecting member loads the connector directly to deform the first housing and immobilize the head therein. A solution of this kind is suggested by the reference of Le Couedic, which

discloses a device in which clamping the screw to the bar clamps jaws onto the bar. The fact that the jaws clamp a bar instead of an anchor member head does not change the nature of the clamping device, which can equally well be used to clamp a bar or an anchor member head, such as the anchor member head of Errico. It should further be noted that the "clamping means" is not defined in the claims. Therefore, the combination of Errico in view of le Couedic is proper.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-

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4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene  
May 18, 2005

  
PEDRO PHILOGENE  
PRIMARY EXAMINER